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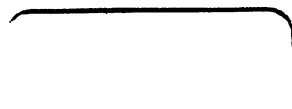
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A FEW NOTES ON  
ADMIRALTY JURISDICTION  
IN  
THE COLONY AND IN THE PROVINCE  
OF THE MASSACHUSETTS BAY  
BY  
JOHN NOBLE

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## A FEW NOTES ON ADMIRALTY JURISDICTION IN THE COLONY AND IN THE PROVINCE OF THE MASSACHUSETTS BAY.

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A YOUNG colony naturally has little occasion for any full code of Admiralty laws or any distinctive Admiralty Courts. It has little concern about those matters which fall properly within such jurisdiction, for it can dispose of them with a fair amount of justice and convenience in its local courts. Until more complex internal conditions and outside relations grow up, it finds this the easiest and most satisfactory way. "It was evidently so in Massachusetts. Not until 1650 is there any legislation, even remotely connected with such affairs, apparent in the Massachusetts Colony Records, and the Court records are silent in the early years. Up to 1644 neither in the Massachusetts Colony Records nor in the records in the so-called Barlow Copy is there more than a single entry that savors of Admiralty jurisdiction. At a Court held 2 June, 1635, controversies which arose between certain parties as to their rights in the ship *Thunder* were sent to a board of arbitrators for determination.<sup>1</sup> The latter fact in itself, however, proves nothing, for to a large degree the Court records are missing, and where they exist they are conspicuously incomplete, as I have shown elsewhere,<sup>2</sup> and contain little beyond the record of cases of a criminal or of municipal or otherwise public character. Civil cases between individuals seem not to have been recorded at all in the earliest years, and the later records, which are shown to have existed, have been lost from a time beyond the memory of living man. No full records of the Court of Assistants appear till 1673, and of the other Courts at about the same time. Much can be supplied, however, from certified copies found in

<sup>1</sup> Massachusetts Colony Records, i. 154; Records of the Court of Assistants, ii. 54.

<sup>2</sup> Preface to Records of the Court of Assistants, vol. i. p. xi.

later cases among the Court files and in the writings of contemporaries, especially of Winthrop.<sup>1</sup>

The Colony Charter of Charles, without the reservation of the Province Charter of William and Mary, gives full power to hold Courts, to "establishe all manner of wholesome and reasonable orders, lawes, Statutes, and Ordinnces, direcc̃cons, and instrucc̃cons, not contrarie to the lawes of this our realme of England," and for "the directing, ruleing, and disposeing of all other matters and thinges" for the religious, peaceable and civil government of the Colony, with "full and absolute power and authoritie" to all the higher officers of the Colony, "according to the Orders, lawes, ordinnces, instrucc̃cons and direcc̃cons aforesaid, not being repugnant to the lawes and Statutes of our realme of England."

Acting under this authority, and with its usual sturdy independence and its application of good common sense and Anglo-Saxon notions of justice, the Colony probably got safely through all those cases that smelled of the sea, either in the Court of Assistants or in the General Court, without much difficulty, for many years.

As showing how little distinction was made by the courts between admiralty and common law proceedings in cases before then, Washburn<sup>2</sup> refers to the case of Madame La Tour in 1644, giving some account of it taken from Winthrop.<sup>3</sup> But some twenty years after the first settlement in Boston, questions apparently began to arise, and the necessity of some formal code began to show itself. And here appears the first attempt at legislation — which was apparently attended with only indifferent success :

Att a Courte of Elecc̃on, held at Boston, the 22<sup>th</sup> 3 M<sup>o</sup>, 1650.

Whereas this commonwealth is much defective for want of lawes for Marityne affayres, and forasmuch as there are already many good lawes made & published by o<sup>r</sup> owne land & the French nation, & other kingdomes & common wealths, this court doth therefore order, that the sajd lawes, printed & published in a booke called Lex Mercatoria, shalbe pused & duly considered, & such of them as are approved by

<sup>1</sup> Records of the Court of Assistants, vol. ii. part iii., now in preparation, attempts to fill these gaps, as far as possible. See Preface, vol. i. p. xii.

<sup>2</sup> Sketches of the Judicial History of Massachusetts, p. 68.

<sup>3</sup> History of New England (1853), ii. 192, 196, 198-201. Some later reference to the case is to be found in the Massachusetts Colony Records, iii. 49.

this Court shalbe declared & published, to be in force within this jurisdiction after such a time as this Court shall appoynt; and it is further ordered that M<sup>r</sup> Bellingham, M<sup>r</sup> Nowell, M<sup>r</sup> Willoby, Capt. Hawthorne, the Auditor Generall,<sup>1</sup> & M<sup>r</sup> John Allen, shalbe a committee to ripen the worke, & to make returne of that which they shall conclude vpon unto the Generall Court, and the time of their meetinge to be the first third day of the sixth mo<sup>th</sup> next —

p Cur.<sup>2</sup>

This Committee appears to have been somewhat slack in the duty assigned to it, and —

Att the Second Session of the Generall Court, held at Boston the 14th October, 1651, [it appearing that] s<sup>d</sup> committee haue not yett mett according as was then concluded, . . . it is ordered by the Court, that the accomplishing of that worke shalbe referred to M<sup>r</sup> Nowell & the Auditor generall . . . to make returne thereof to the next Generall Court.<sup>3</sup>

The second Committee apparently accomplished as little. At any rate, it does not appear how much benefit was derived from the labors imposed, how far they were discharged, or what was the practical outcome.

But whether with or without a code there is no evidence of any change in the jurisdiction, and at all events it is evident that they dealt with piracies and other happenings upon the high seas as if they had occurred on the main land. Exigencies would arise from time to time when the want of controlling laws would be felt.

Incompetency and greed are peculiar to no time or people, and even Puritan Commonwealths are not exempt. Somewhat later it seems to have become necessary to protect the interests of merchants and the lives of mariners from such shortcomings of human nature, and, though perhaps not strictly a matter of admiralty jurisdiction, resort is had to legislation.

At the Session of the General Court in October, 1667, it appearing that "divers unskillful persons, pretending to be shipwrights, doe build shippes & other vessells . . . which are very

<sup>1</sup> Capt. Nathaniel Duncan of Dorchester and later of Boston was the only incumbent of this office, which was created in 1645 and abolished in 1657.

<sup>2</sup> Massachusetts Colony Records, iii. 193; iv. (i.) 10, but in the latter less full and without the preamble.

<sup>3</sup> Massachusetts Colony Records, iii. 252; iv. (i.) 69.

defective, both for matter & forme, to the great prejudice of merchants & ounors, & the danger of mens lives at sea,"<sup>1</sup> a Committee is appointed to draw up laws to remedy the evil.

For many years after the unsuccessful movement in 1650, the Colony ran on without any distinctive maritime code. The Body of Liberties, Liberty 67, had laid it down as among the rights of the freemen, "to choose yearly at the Court of Election" "all the General Officers of this Jurisdiction," among them the "Generall of our warres" and "our Admirall at Sea" — subject to discharge as therein provided. But the growth of the Colony at last brought about some legislation, and —

Att y<sup>e</sup> Second Sessions of the Generall Court, held at Boston, 14th of October, 1668.

Whereas, through the blessing of God vpon this jurisdiction, the navigation & maritime affaires thereof is grown to be a considerable interest, the well management whereof is of great concernment to the publick weale; for the better ordering the same for the future, & that there may be knowne lawes & rules for all sorts of persons imployed therein, according to their severall Stations and Capacitjes, & that there may be one rule for the guidance of all Courts in their proceedings in distribution of justice,

a law is enacted containing twenty-seven sections and covering differences between owners, conduct of masters and mariners, penalties to be imposed on them for breaches of duty, questions of wages, provisioning of vessels, conduct of voyages, loss of goods, collisions, and other kindred matters.<sup>2</sup>

There would seem to have been some sort of an Admiralty Court or a Court exercising such jurisdiction in Massachusetts a dozen years earlier, by the mention made in the Danforth Papers of "our Court of Admiralty here," in 1666.<sup>3</sup> It seems most likely that it

<sup>1</sup> Massachusetts Colony Records, iv. (ii.) 345.

<sup>2</sup> Massachusetts Colony Records, iv. (ii.) 388; Colonial Laws, 1660 (Whitmore's edition), p. 251.

<sup>3</sup> 2 Massachusetts Historical Collections, viii. 101.

Somewhat illustrating this is a case tried in the County Court in April, 1663, with an air of piracy about it, in spite of the result the jury arrived at:

John Woodmansey vs. { Monsieur Labourne and  
  { Monsieur Laremit

for forceible seazing and takeing away in a way of Piracy the vessell called the Progresse, whereof William Russell was master, being upon lawfull imploiment and laden with

was no distinct Court, but simply an exercise, as occasion required, of Admiralty powers in the local Courts of the Colony, probably the Court of Assistants, or under the Governor as Vice-Admiral, as the colonists were always equal to the situation at hand, and had no hesitation in finding good legal ground for meeting necessary emergencies.

In 1673 appears the first formal legislation as to the trial of "all cases of admiralty."

Att a Speciall Generall Court, called by order of the Council, and assembled together in Boston, 10th December, 1673. [At an adjournment thereof on the 6th of the following January,] It is ordered by this Court & the authority thereof, that henceforth all cases of admiralty shall be heard and determined by the Court of Assistants, and to be issued by the bench w<sup>th</sup>out a jury, unless the Court shall see cause to the contrary, provided allwayes this act shall not be interpreted to obstruct the just plea of any marriner or merchant impleading any person in any other Court vpon any matter or cause that depends upon contract, covenant, or other matter of comon æquity in maritime affayres, to be issued according to the knowne lawes of this colony.<sup>1</sup>

Numerous cases under this jurisdiction are to be found in the Records of the Court of Assistants, Volume I., lately issued, which show the variety of causes that came before it and their character. Among them are some interesting trials for piracy occurring not

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fish upon the confines of Nova Scotia or thereabouts which said vessell together with the fish, the one third part of both belongeth to the said Woodmansey, &c. &c.

They were placed in prison in the care of the keeper by John Pease, constable.

Copy of County Court Record at Boston 28 April 1663, states that "nothing appearing against Laremitt, the action proceeded," etc. Jury brought in verdict for the plaintiff £280-6-0 damage and costs of Court £0-44-8. "The jury affermed they medled not w<sup>th</sup> that of Piracie."<sup>1</sup>

Still earlier will be found cases where the Court of Assistants took jurisdiction, pure cases of Admiralty, and where, when in doubt, they referred the matter to the High Court of Admiralty in England.

Many cases of this sort will appear in the Records of the Court of Assistants, volume ii., now in course of preparation and to be issued in the near future.

<sup>1</sup> Massachusetts Colony Records, iv. (ii.) 575; Colonial Laws, 1672-1686 (Whitmore's edition), p. 213.

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<sup>1</sup> Suffolk Court Files, no. 514. See also no. 817,826 for a full history of the case. In the last group there are thirty-three papers.

only upon the high seas but within the limits of Massachusetts waters not far from Boston.

The records show the Court of Assistants under this law of 1673 to have sat regularly and frequently as a Court of Admiralty. Besides these regular sittings, a special or additional sitting seems sometimes to have been called upon request, or rather a matter brought specially before it.

Att a Court of Assistants or Admiralty held at Boston on the 15<sup>th</sup> of April 1686

The Court mett at the time and at the request of M<sup>r</sup> Willjam Woodrope of the Island of St. Christophers now Resident in Boston A Court of Admiralty is granted him against M<sup>r</sup> John Keech [and another,] to be held at sajd Boston on the 22<sup>th</sup> of Instant Aprill at three of the Clock in the Afternoon; [and] Att an Adjournment of the Court of Assistants or Admiralty held at Boston 22<sup>th</sup> of April 1686 [the case is heard, the complaint being for a wrongful attachment and judgment in the County Court.]

The case against Keech as also that against Thornton is recorded at length.<sup>1</sup> As this volume covers the period from 1673 to 1692, it shows that this jurisdiction continued up to the time when the Colony passed into the Province.

There is to be found an instance of the General Court acting as a Court of Admiralty:

Att the second Sessions of the Generall Court, held at Boston, the 11<sup>th</sup> of October, 1676.

The Court, as the Court of Admiralty resolved, & that by voate, that Robert Orchard, the officer, had not acted regularly in his seizing, &c., and to find for the plaintiff, Daniel Anderson.<sup>2</sup>

The Colony passed away and the Province succeeded. The Provincial Charter of William and Mary made direct mention of Admiralty Courts and reserved to the Crown the right to establish and organize them:

~~Prohibited~~ alwaies and it is hereby declared that nothing herein shall extend or be taken to Erect or grant or allow the Exercise of any Admirall Court Jurisdiction Power or Authority but that the same shall be and is hereby reserved to Vs and Our Successors and shall from time to

<sup>1</sup> Records of the Court of Assistants, i. 298, 300, 301.

<sup>2</sup> Massachusetts Colony Records, v. 131.

time be Erected Granted and exercised by Vertue of Commissions to be yssued vnder the Greate Seale of England or vnder the Seale of the High Admirall or the Commissioners for executing the Office of High Admirall of England.<sup>1</sup>

In the absence of any regularly constituted Courts, whatever Admiralty authority became necessary was executed by the local authorities.<sup>2</sup>

As showing that the local Courts took and exercised jurisdiction at this time over matters that savored of Admiralty is the case of *Charles La Tour v. Thomas Walters, etc.*, in 1696. This was an appeal from a judgment of the Inferiour Court of Common Pleas on a "Libell . . . as well for and in behalfe of our Sovereign Lord the King as for themselves," brought by the defendants in the Inferiour Court, under "An Act made by the Generall Assembly of this His Maj<sup>ties</sup> province of the Massachusetts Bay, in the Seventh year of His present Maj<sup>ties</sup> Reigne, Entituled an Act to prevent the Supplying of his Maj<sup>ties</sup> Enemies."<sup>3</sup> The jury —

find for the defendants. — Confirmation of the former Judgment. It is therefore considered by the Court That the s<sup>d</sup> Informers shall recover the s<sup>d</sup> Shallop Jacob with her Tackle Apparrell furniture Lading on behalfe of His Majesty and themselves in manner as by the aforesaid Act is directed.<sup>4</sup>

There is a large group of papers among the Suffolk Court Files relating to this case and giving much of its inside history: — the Information, plea, judgment and record of the Inferiour Court; a petition for protection and aid as not knowing the English language; the reasons of appeal, and answer thereto; an address to Governor Stoughton (translated), praying the restoration of his goods and vessel; certificates of Naval officers of Boston and of New Castle, New Hampshire; various depositions, a list of the papers, *etc.*, taken on board the shallop, *etc.*; eighteen in all. The

<sup>1</sup> Province Laws, i. 19.

<sup>2</sup> The Commissions of the Governors of the Province as Vice-Admirals will appear in Volume ii. of the Publications of this Society.

<sup>3</sup> Passed 17 August, 1695, Province Laws, i. 220.

<sup>4</sup> Records of the Superiour Court of Judicature, 1695–1700, ii. 81. This volume, backed 1686–1700, contains also the record of four special Courts of like character, 1686 and 1687, and one 1698.



spelling of the name of the original defendant, De La Tour, is in various modes.<sup>1</sup>

Whatever of this there was at first fell upon Governor Phips. On some complaints arising as to his performance of such duties Washburn says a Court was created in 1694 consisting of a Judge, a King's Advocate, a Register and a Marshal.<sup>2</sup> But as appears by a letter of Lieutenant-Governor William Stoughton to the Lords of the Privy Council, no judge had been appointed and commissioned in September, 1696, and the Lieutenant-Governor adjudicates upon some fishing vessels that had been brought in as prizes by privateers.<sup>3</sup>

There are no Admiralty records for this early period found upon which to fall back as ultimate authority. Washburn says that the first judge whose appointment he can ascertain was Wait Winthrop, commissioned in 1699 over the Northern District, as it was called, consisting of New York, Massachusetts, Connecticut, Rhode Island and New Hampshire.<sup>4</sup> Douglass says the same. The Commissions ran from the King, under the broad Seal, or the Warrant of the Lord High Admiral,—in reality from appointment of the Lords Commissioners of Admiralty.

The jurisdiction of the Courts was extensive, but is best shown by the records. The Court sat without juries, and where no express Acts of Parliament existed governing the cases before it, was governed by the Civil and Maritime law. An appeal lay to the Court of Delegates in England. No salaries were fixed, and the compensation depended upon the fees for a long period—till 1769, as Washburn gives it; but apparently the salary of the Judge, Auchmuty, was named in 1767 and increased in 1769. The Province at an early date took into its own hands the regulation of the fees. By Chapter 7, Acts of 1716–17, a fee system was established. Some question having arisen whether this was within the province of the General Court of the Province, it was referred to Paul Dudley the Attorney-General, who decided it was within its power, "more especially if the fees of said Court

<sup>1</sup> Suffolk Court Files, no. 3,407.

<sup>2</sup> Sketches of the Judicial History of Massachusetts, p. 172.

<sup>3</sup> Province Laws, vii. 514.

<sup>4</sup> Sketches of the Judicial History of Massachusetts, p. 175; Douglass, Summary, i. 483.

of Admiralty are either uncertain or grievous.”<sup>1</sup> The General Court had already, by Act of 1692-93, Chapter 37, established the fees in the other Courts of the Province. Douglass gives the succession of judges, and Washburn follows him.<sup>2</sup>

Winthrop was succeeded by William Atwood, 28 October, 1701, whose district took in also the Jerseys. He was followed by Roger Mompesson in April, 1703, but in the same year the district was divided, and a new Commission was issued to Nathaniel Byfield over Massachusetts, New Hampshire, and Rhode Island. Mompesson held office till his death, 2 January, 1714-15. Byfield, appointed December, 1693, continued in office till 1715. John Menzeis succeeded Byfield, bringing his Commission with him and arriving here 24 December, 1715, and taking his seat in the following March. He died at Boston 20 September, 1728, at the age of seventy-eight.<sup>3</sup> Robert Auchmuty was appointed Judge *pro tempore* by Governor Burnet, according to Douglass. Judge Byfield was again commissioned 25 November, 1728, though his Commission was not received till 10 April, 1729, when he took the oaths of office, and remained till his death 6 June, 1733, at the age of eighty. Robert Auchmuty followed him and held the office till 1747, when he was superseded by Chambers Russell, dying in 1750.<sup>4</sup> Chambers Russell was appointed Judge over the same District of Massachusetts, Rhode Island and Connecticut in 1747, and held the office till his death at Guildford, Surrey, England, 24 November, 1766. On the death of Russell, Robert Auchmuty

<sup>1</sup> Province Laws, ii. 68.

<sup>2</sup> Douglass, Summary, i. 483; Washburn, Sketches of the Judicial History of Massachusetts, p. 175.

<sup>3</sup> Boston Weekly News-Letter of Thursday, 19-26 September, 1728, No. 91, p. 2/2, which contained the following notice :

On Friday Morning last the 20th Instant, died here the Honourable John Menzies Esq; Judge of the Court of Vice-Admiralty for the Provinces of the Massachusetts-Bay, New Hampshire, and the Colony of Rhode-Island, in the 78 Year of his Age, and was decently Inter'd on Tuesday last the 24th Currant.

<sup>4</sup> The Boston Gazette of Tuesday, 1 May, 1750, No. 1572, p. 1/3, contains the following notice :

Last Saturday Morning about 4 o'clock died here the Hon. Robert Auchmuty, Esq; an eminent Attorney at Law; and for several Years Judge of the Court of Vice-Admiralty, also an Agent for this Province at the Court of Great Britain.

Auchmuty's death is also noticed in the Boston Evening-Post of Monday, 30 April, 1750, No. 768, p. 1/2.

the younger was appointed Judge in April, 1767, and on 6 July, 1767, was commissioned as Judge over all New England at a salary of £300. His Commission was renewed in March, 1769, and his salary increased to £600. He held office till the Revolution, and, one of the proscribed, left the country for England in 1776.

Among the names of the Deputy Judges as given are Nathaniel Byfield in 1699; Thomas Newton, 1701-08; Nathaniel Hubbard for Rhode Island; George Cradock, 1747, who resigned in 1766 on account of his years and infirmities, and died at eighty-seven, 26 June, 1771;<sup>1</sup> and William Reed, 1766. Brief biographies are given by Douglass and by Washburn of the incumbents of the offices, several of whom also held judicial appointments under the Province. One of the extracts from the Records at the end of this communication shows Thomas Steel to have been appointed in 1722.

The extent of the Northern District varied: at first it included New York, Massachusetts, Connecticut, Rhode Island and New Hampshire; then New Jersey was added; New York and New Jersey were not long after withdrawn; and finally it embraced Massachusetts, New Hampshire and Rhode Island only.

A change in the organization of the Admiralty Court seems to have been contemplated and partly carried out in 1764, when Dr. William Spry was appointed a Judge of Vice-Admiralty for all America. On his arrival in Halifax he fixed his headquarters there for "any province of America," and by proclamation set the times for holding his Court. The next year he contemplated removing to Boston and entering upon the duties of the office there, as Supreme Judge of Vice-Admiralty. But this seems never to have been done, and in 1767 he was made Governor of

<sup>1</sup> The Massachusetts Gazette of Monday, 1 July, 1771, No. 3/2, contains this notice:

Wednesday morning last died here, the Honourable GEORGE CRADDOCK, Esq; aged 87 Years. A Gentleman of unblemished Character. His Funeral is to be attended this afternoon.

The King's Chapel Burial Register records his burial on the first day of July.

For this information I am indebted to Mr. Julius Herbert Tuttle, the obliging assistant librarian of the Massachusetts Historical Society.

Barbadoes, so that at all events his incumbency as a judge was of short duration.<sup>1</sup>

Beside the regular Vice-Admiralty Courts for general admiralty business there were also special commissions convened from time to time for the trial of piracies committed upon the high seas. Douglass gives some account of these, styling them Justiciary Courts of Admiralty.<sup>2</sup> Their constitution varied somewhat in the different Provinces. In Massachusetts this Commission usually consisted of the Governor, Members of the Council, the Judge of the Vice-Admiralty Court, the Commander of the Royal Vessels of War on the Station, the Surveyor of the Customs for the Northern District, the Collector of Customs; sometimes it seems to have been specially constituted, and occasionally officials from other Provinces appear to have taken part. Dr. Douglass characteristically does not hesitate to criticize the constitution of the regular Courts of Vice-Admiralty:

A Sole judge, without a jury, in Cases of high Consequence; and this Judge too frequently appointed at Random, seems to be an Error in the Constitution. It is true there may be an Appeal to the Court of Delegates in Great Britain.<sup>3</sup>

The crime of piracy was evidently very common, especially in the earlier years of the Province, when it so frequently appears as a branch of Admiralty jurisdiction. Some of the cases have become historically famous, and live not only in the law but also in the literature of the times. The trial of John Quelch in 1704 has become one of the celebrated causes. It was made the subject of an interesting communication to this Society by our associate Mr. Goodell.<sup>4</sup> It was held before a tribunal made up of the Governors and the Lieutenant-Governors of the Provinces of the Massachusetts Bay and New Hampshire, the Judge of Vice-Admiralty in each, the Chief-Justice of the Superiour Court of Judicature, the Secretary of the Province, Members of the Council of Massachusetts Bay, and the Collector of Customs for New England. It was convened in the Old Star Tavern on Hanover Street. A full account of the trial has been given by Mr. Goodell

<sup>1</sup> Washburn, Sketches of the Judicial History of Massachusetts, p. 175.

<sup>2</sup> Summary, i. 484.

<sup>3</sup> *Ibid.* i. 483.

<sup>4</sup> Publications, iii. 71.

in his Notes to the Province Laws,<sup>1</sup> and he has made an exhaustive and learned examination and discussion of various questions involved in it, touching law and procedure. His account is marked by his usual indefatigable research, keen analysis, independent criticism, legal and historical learning, and characteristic ability. The account is another illustration of the value of his Notes in that great work, and of the loss which has been caused by the restrictions in this direction made necessary in the later prosecution of the work under the stricter construction put upon the original Act authorizing the publication of the Province Laws and Resolves.

There was another trial for piracy, that of Robert Munday, at Newport, Rhode Island, before a jury in the local tribunal, in 1703, where some questions seem to have arisen as to its legality, likewise discussed by Mr. Goodell.<sup>2</sup>

Legal questions of various sorts were apparently not infrequent in such trials, and were discussed with more or less warmth in various quarters. Judge Sewall seems to have had doubts on many points, as appears in his Diary and in letters. He hesitated on the evidence in the Quelch case.<sup>3</sup> He questioned the legality of sending Kidd to England for trial,<sup>4</sup> — a matter of vital interest to Kidd by reason of the difference in the penalty.

Washburn<sup>5</sup> cites also three courts held by Special Commission for the trial of pirates, — one in Newport in 1723, where the Commission consisted of William Dummer, as President, Samuel Cranston, Nathaniel Paine, Addington Davenport, Thomas Fitch, Spencer Phips, John Menzeis, then Judge of the Vice-Admiralty Court of Massachusetts, and Thomas Lechmere; a second in 1746, held in Faneuil Hall, presided over by Governor Shirley; and a third in 1769, consisting of Governor Bernard, Samuel Hood, the Commander of the Ships on this station, Lieutenant-Governor Hutchinson, Robert Auchmuty the younger, then Judge of the Vice-Admiralty Court, Andrew Oliver, Secretary of the Province,

<sup>1</sup> Province Laws, viii. 386-398. See also Sewall's Diary, ii. 104-111, for a full and graphic story of the expedition after the pirates, the trial, execution, *etc.*

<sup>2</sup> Province Laws, viii. 386.

<sup>3</sup> *Ibid.* viii. 397.

<sup>4</sup> *Ibid.* viii. 386. See also Sewall's Diary, ii. 3, 4, as to the vote in Council and the grounds of his action.

<sup>5</sup> Sketches of the Judicial History of Massachusetts, p. 173 *et seq.*

Robert Trail, Collector of Customs at Portsmouth, and John Nutting, Collector at Salem.

The last has a special interest from the fact that John Adams was of counsel for the prisoners, and that he afterward improved the occasion in a characteristic account of the trials. Nearly fifty years later, with a memory as fresh and a narrative as clear and vivid as if of an occurrence of yesterday, in a letter to Jedediah Morse 20 January, 1816, he gives the story: the indictment of four seamen of Marblehead for piracy and murder in resisting a press-gang from the *Rose Frigate*, on board of a ship of Mr. Hooper of Marblehead, in 1769, just before the recall of Governor Bernard:

When in law, truth and conscience, the commander of the *Rose Frigate* ought to have been prosecuted for piracy and murder on the high seas, in illegally sending a pressgang to enslave freemen, and compelling them in self-defence to destroy their invader and intended destroyer; or in the better language of the boatswain of the *Rose Frigate*, "to deprive honest men of their liberty."

He then describes the affray, the death of Lieutenant Panton and the hand to hand fight; the trial, with its incidents, the legal struggle, the pleas to jurisdiction, the demand for a jury, *etc.*, all overruled; and the mysterious outcome of the whole:

What has become of the records of this Court, whether they have been sent to Halifax or to London, whether they remain in any repository in Boston, or whether they have been burned like most of the records of this world, I know not.

He is especially severe on Hutchinson for his share in this trial, which he says "accelerated the catastrophe of the 5th March, 1770;" but this seems to be unjust, for the explanation given by Hutchinson apparently clears up all the mystery of the case, and puts him in an attitude very different from that attributed to him.<sup>1</sup>

The frequency of piracy in the earliest years is indicated again by various Resolves of the Provincial Legislature, among them a Resolve (1719-20) ordering a new trial on the petition of Christopher Taylour, setting out a judgment having gone against him

<sup>1</sup> J. Adams, Works, ii. 224-226, ix. 317-319, x. 204-210; Hutchinson, History of Massachusetts, iii. 232 and *note*.

by default in the Superiour Court of Common Pleas in 1717, at a time when he was "taken & in the hands of Pirates in the West Indies & incapable of making his Defence;"<sup>1</sup> and another where reference is made to the "pirates who then infested this Coast" — in granting an allowance to persons who had been impressed by order of the Government to serve in an expedition for the capture of pirates.<sup>2</sup> And again (Laws of 1724–25, Chapter 14) a Resolve for an allowance to Andrew Harradine and others, the petitioners, who had been taken prisoners by Capt. John Phillips of the Sloop Squirrel, and risen and taken possession of the piratical craft, and brought the Captain and his crew into Boston, "where they have Received a just Sentence to Suffer the pains of Death;" granting £224 and a special grant of £30 to Harradine and three others for special merit in the affair.<sup>3</sup> And also a Resolve the next year (1725–26, Chapter 131), for an allowance to the keeper of the gaol "for the charge of keeping William Taylour and William Phillips, two persons Convict of Piracy, but pardoned by his Majestie, from May 5th 1724 to June 8th, 1725."<sup>4</sup> Such legislation is perhaps most frequent just about this time.

It was in the first quarter of the century that piracies seem to have been most frequent, and references most often found in various quarters to pirates, piratical depredations, expeditions in pursuit, trials and executions. They appear in Judge Sewall's Diary, in the newspapers of the day, especially in the News-Letter, and in contemporary writings, and there is some incidental mention in the records of the Admiralty Court.

Reference has already been made to the trials in the Court of Assistants in the later days of the Colony. In the Inter-Charter period the "Modest Inquiry &c." in its defence of Dudley, gives him the credit of having effectively cleared out such malefactors from the New England coasts. On the records during the Inter-Charter period there is a single record touching piracy, which is as follows

Dom. Rex & Whitaker and Shivorick.

Thomas Whittaker & Nathaniell Shivorick standing comitted upon suspicion of Piracie & no Evidence appeareing to prosecute, nor any direct matter to charge them upon relateing to y<sup>e</sup> same were ordred to

<sup>1</sup> Province Laws, ix. 678.

<sup>2</sup> *Ibid.* ix. 601.

<sup>3</sup> *Ibid.* x. 437.

<sup>4</sup> *Ibid.* x. 626.

be discharged of theyr Imprisonment giving Bond to be of the good behaviour &c<sup>a</sup>.<sup>1</sup>

In the Suffolk Court Files there are also many papers touching cases of piracy.<sup>2</sup>

In the Index to the Province Laws, Volume VIII., is given a list of the English Statutes relating to piracy and crimes upon the high seas. Under the Statute 28 Henry VIII., Chapter 15, it was provided that the trial of pirates should be held within the realm and before a Commission of Oyer and Terminer and a Jury. The Provincial Statute of 1696, Chapter 4,<sup>3</sup> followed largely the Statute of Henry and fixed a trial in cases of "Piracy and Robbery upon the Sea," mainly as if committed upon land, before a Commission therein provided for with a jury, within the Province, settling the penalty as death, if the offence was attended

<sup>1</sup> From the Records of the "Last court of Appeales, Grand Assize, & generall Goale delivery holden (ut antea) at Boston the 2<sup>d</sup> day of Novemb<sup>r</sup> Anno Jacobi Anglia &c<sup>a</sup> secundo Annoq<sup>ue</sup> Domini 1686," fol. 13.

<sup>2</sup> Case of Benjamin Blackleisch, in 1694, late of Boston, mariner, charged with piratically seizing ship Good Hope, Jer. Tay, Master, off the Cape Verde Islands. There are seven papers — list of men aboard both ships, depositions, etc. (Suffolk Court Files, no. 3033). The jury found no bill, and Tay was "Cleared by Proclamation" in Court and in like manner subsequently discharged. The case is recorded. (Records of Superiour Court of Judicature, 1692-1695, i. 86, 142.) There is also much pertaining to the famous John Baptist, with variations of name: nos. 19,755; 19,554; 28,868. See also no. 26,283. There are also other cases: nos. 10,923; 11,945; vol. mlviii, no. 98. Besides these there are others related in different ways to Admiralty matters; as for instance a copy of "Articles of Warr for Admirall, Vice Admirall & other Officers y<sup>t</sup> are in y<sup>e</sup> Duke of Brandenburg's Service" — "Articles 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 32<sup>th</sup>." The paper (no. 28,540) is without date. Some of such papers have been cited in this communication.

A case in which the Duke, "the Great Prince of Brandenburg," is concerned is Paul Sharrot v. Marcellus Cocke, "Att a Court of Assistants or Admiralty . . . the 4<sup>th</sup> of August, 1681" (Second Booke of Records, fol. 126; Records of the Court of Assistants, i. 179). The original papers in the case, ten in number, are in Suffolk Court Files, no. 2,031. This case is illustrative of the jurisdiction of the Court of Assistants in Admiralty Matters, and its mode of handling them, already adverted to, so many instances of which appear in the first volume of its records, lately issued. It shows, too, the preservation of the original files of these early cases, not infrequently to be found in the miscellaneous collection entitled Early Court Files of Suffolk.

<sup>3</sup> Province Laws, i. 245, viii. 386-398.



with murder. This Statute was practically superseded, however, by the English Statutes.

In consequence of delays occurring under the earlier Statute a more summary mode of trial was provided for by that of 11-12 William III. before a special Court without jury; and the crime was made capital. Statute 4 George I., Chapter 11, gave the right to try piracies in the British Colonies in America under the old Statute of Henry VIII.<sup>1</sup>

In the interval after the Revolution broke out and before the establishment of Massachusetts as a free and independent State, various Acts were passed by the General Court establishing Maritime Courts and regulating their jurisdiction and procedure.<sup>2</sup> At first such courts were mainly prize courts, later they were to deal with questions of seamen's wages, salvage, and the usual matters of Admiralty jurisdiction. An appeal lay to the Superiour Court of Judicature and to the Congress. The civil law was to be followed where no special provision was otherwise made. They sat without a jury, though in certain controverted questions of fact a jury might be brought in.

At times there was more or less friction between the Superiour Court of Judicature and the Courts of Admiralty, in consequence of the power claimed by the former to issue writs of Prohibition to restrain what it considered any undue exercise of jurisdiction by the latter. This was not unnatural, considering the difference in the constitution of the Courts, and the source of their authority, each jealous of its own prerogatives; and some political history is involved with the controversies. The officers of the Crown, too, took offence at the exercise of such a power, and the Province suffered some complaint in consequence. Dummer in his Defence of the Charters demonstrates the legal existence of such power, its necessity in preserving the liberties of the people, and claims that it was never improperly exercised.<sup>3</sup> The legal source of this power is thus given by Dummer :

The rights of the Courts of Common Law within the Province of the Massachusetts to restrain the excesses of the Admiralty jurisdiction,

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<sup>1</sup> Province Laws, viii., Index and Notes.

<sup>2</sup> *Ibid.* v. 436-441, 462-468, 474, 503, 806-808, 930, 931, 1077, 1173-1175.

<sup>3</sup> Cited in Washburn's Sketches of the Judicial History of Massachusetts, p. 159.

are not derived from their Charter, but from subsequent laws of the Province, confirmed afterwards by the Crown.<sup>1</sup>

Whether the instances of its use were so infrequent as he claims would seem open to doubt. It would appear that it must have been exercised on many more occasions than he says, but only a careful investigation and a search of the records would reveal the actual fact. He may have meant only those cases which were important in themselves or involved some important and disputed point of law, disregarding those of lesser consequence.

There is the famous case of *Scollay v. Dunn*, reported in full in Quincy,<sup>2</sup> with subsequent Notes—where the arguments of Counsel and the opinions of the Judges are given. Judge Sewall refers to a case where the writ was issued :

Jan. 29. 1716/1717 — Super<sup>r</sup> Court at Charlestown held by the 5 Justices with their new Commissions from Gov<sup>r</sup> Shute. . . .

The afternoon was taken up with the Admiralty cause. Mr. Auchmuty and Smith for the Libel, Mr. Dudley and Vallentine against it. Court unanimous in the Prohibition.<sup>3</sup>

This is evidently the case of *Thomas Hutchinson and others v. Daniel Wybourne*, where the final writ to Judge Menzeis of the Vice-Admiralty Court is ordered to issue.<sup>4</sup> There is also the earlier case of *John Oulton and others v. John Stacy and others*,<sup>5</sup> where the writ was issued. In the same volume is another, that of *Robart Manderson, sailor, v. John Hughs*;<sup>6</sup> and in *John Hilman and others, complainants*,<sup>7</sup> reference is made to the issue of a

<sup>1</sup> Defence of the New England Charters, p. 26; Quincy's Massachusetts Reports, p. 82.

<sup>2</sup> Quincy's Massachusetts Reports, pp. 74-83. The record of the case is found in Records of the Superiour Court of Judicature, 1763-64, vol. xxiv. fol. 107.

<sup>3</sup> Diary, iii. 118.

<sup>4</sup> Records of the Superiour Court of Judicature, 1715-1721, vol. iv. fol. 169.

<sup>5</sup> *Ibid.* fol. 142. To these cases I had recourse in framing a writ some twenty-five years ago. The writ had several times been ordered in the Supreme Judicial Court to issue, as appeared from the Reports, but seemed never to have been actually drawn up and issued, the order for it being at once respected and fulfilling all purposes. No precedent was found within the days of the Commonwealth. The forms found in those old cases of more than one hundred and fifty years before furnished concise models to work upon, which avoided the prolixity and cumbrousness of the English writs, too unwieldy in cases of emergency and stress.

<sup>6</sup> *Ibid.* fol. 259.

<sup>7</sup> *Ibid.* fol. 338.

writ to the Admiralty Court on 12 November, 1720, but the record of that case does not appear.

In some of these cases the ground of the application and of the determination was that the cause of action arose in Boston, and not upon the sea, and that jurisdiction lay only in the local Courts.

Sewall refers to another case in 1725, though the case itself does not appear on the Records of the Superiour Court:

Dec<sup>r</sup> 17, 1725.

Judge Davenport and Judge Quincy came to me with Mr. Rolf about a Prohibition in Mr. Robinson's Admiralty Case.

"Tis to be Try'd at Charlestown Court.<sup>1</sup>

There is a case in the Admiralty Records,<sup>2</sup> *House v. Gibbs*, where Mr. Auchmuty pleaded to the jurisdiction of the Court. Nothing is said in the record about a Prohibition, but in the margin under the title of the case is written Prohibition. The Court, however, proceeded with the case.

In the case of *Edward Durant v. Court of Admiralty*, the plaintiff presented an "Information and Suggestions" by his counsel John Read for a Writ of Prohibition, setting out that one James Scolly, an officer of the Customs, styled a Waiter, "preferred a Memorial to Thomas Lechmere, Esq<sup>r</sup>, Surveyor Gen<sup>l</sup>, &c," and "another to John Menzys, Esq<sup>r</sup>, Judge of Vice Adm<sup>ty</sup>, on account of abuse to himself s<sup>d</sup> James Scolly," and that a libel and complaint by Lechmere and Scolly had been brought against the plaintiff, and praying "that a final Prohibition be awarded forbidding the Judge of the Court of Admiralty to hold plea of this cause, 14<sup>th</sup> June 1723." The Superiour Court on 6 June issued a temporary writ and on 7 June, "after a full hearing," a final and peremptory Writ of Prohibition.<sup>3</sup> As the case does not appear on the Admiralty Records, the Court evidently obeyed the writ.

A letter from Samuel Shute to Lieutenant-Governor and Acting Governor William Dummer, of which a copy was given at the time, touches on the disagreements and collisions:

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<sup>1</sup> Diary, iii. 369.

<sup>2</sup> Book No. 2, fol. 188, 30 January, 1724.

<sup>3</sup> Records of the Superiour Court of Judicature, 1721-25, vol. v. fol. 117; Suffolk Court Files, no. 16,953.

ST. JAMES, June the 5th, 1726- . . .

The affair between the Judges of the Province, and the Officers of the Admiralty and Customs, will be quickly brought to a Conclusion.

It seems very strange on this side the water that the Judges should support any of their proceedings by Acts of Parliament that were made before New England was settled; or any Acts where the Plantations are not mentioned within the Act.

For where they are not specified, the Laws made in England cannot affect them, one way or the other. SAM<sup>l</sup> SHUTE.<sup>1</sup>

Bearing on this subject is a copy of a "Memorial of the Admiralty and Custom House Officers," dated at Boston, 8 October, 1730, "To Gov. Jonathan Belcher Vice Admiral of His Majesties Provinces of the Massachusetts Bay in N. E. &c. &c.," signed by —

NATHANIEL BYFIELD *J. V. Adm.*

ROB<sup>t</sup> AUCHMUTY *Advo. Gen<sup>i</sup>*

JOHN BOYDELL *Reg<sup>r</sup>*

CHA. PAXTON *Marshall*

JA. STEVENS *Survey<sup>r</sup> General*

JOHN JEKYLL, *Collector.*

W<sup>m</sup> LAMBERT, *Comp.*

JONA. PUE, *Survey<sup>r</sup> & Searcher*

W<sup>m</sup> FAIRFAX, *Collector,*

complaining of the indifference of the Provincial Judges to breaches of Acts of Trade, and the "incroaching proceedings of such Judges."<sup>2</sup>

The Admiralty records for the Provincial period, now extant or at least accessible and in the form of regular records, are far from complete. The gaps possibly could be filled to a considerable extent by research in the Massachusetts Archives. Among the records now in the Supreme Judicial Court are five books, which after drifting about in devious wanderings brought up a few years ago in the Library of the Boston Athenæum. These were transmitted to the United States District Court for Massachusetts, by which not long ago through the courtesy of Mr. Justice Gray of the Supreme Court of the United States and of our associate Judge Francis C. Lowell they were sent to the Supreme Judicial Court, among whose records they have at last found their proper and legitimate abiding place. They bear the marks of age and hard usage and consist of "Records of Admiralty," Book No. 2, 1718–1726; a second volume "At a Court of Vice Admiralty holden at Boston," 1726–1733; a third "At a Court of Admiralty holden at

<sup>1</sup> Sewall's Letter-Book, ii. 210.

<sup>2</sup> Suffolk Court Files, no. 30,398.

Boston," 1739-1745; a fourth "Admiralty Book & Acc<sup>t</sup> of Sales," July 22, 1743 to 1765, which contains no records; and the fifth "At a Court of Vice Admiralty holden at Boston," 1765-1772. They are full of most interesting matter and in them lies much of the history of Admiralty for that period. The first volume, the earliest, is missing, and the dates above show many gaps.

Some extracts have been made from one of the volumes before mentioned, not so much for their importance as cases, as to indicate something of the variety and extent of the jurisdiction exercised, beside the more common cases involving breaches of trade laws, violations of treaty stipulations, frauds on the revenue, seamen's wages, collisions, and similar matters, that come up in Courts of Admiralty; and some also for a certain curious character or interest of their own.

The first is a case somewhat curious as showing the enforcement in the Province of a very ancient royal right, and also the fact that in those early days whales still frequented Massachusetts Bay and that the industry of whale fishing was of value. According to Blackstone —

Another ancient perquisite belonging to the queen consort, mentioned by all our old writers, and therefore only, worthy notice, is this; that on the taking of a whale on the coasts, which is a royal fish, it shall be divided between the King and queen; the head only being the King's property, and the tail of it the queen's. *De Sturgione observetur, quod rex illum habebit integrum: de balena vero sufficit, si rex habeat caput, et regina caudam.* The reason of this whimsical division, as assigned by our Antient records, was, to furnish the queen's wardrobe with whalebone.<sup>1</sup>

In passing, it may perhaps be questioned whether the "Antient records" were as sound on natural history as on common law.

Again he refers to the King's right to royal fish, as a branch of his ordinary revenue, when either thrown ashore or caught near the coasts, the important regard attached to it in ancient times, its origin, and the claim and allowance of it in the Statute "*de prerogativa regis*" (17 Edward II., Chapter 11), and also the distinction between whale and sturgeon before mentioned.<sup>2</sup>

<sup>1</sup> Commentaries, Book i. ch. iv., citing Bracton, Britton, Fleta and Prynne.

<sup>2</sup> Blackstone, Book i. ch. viii. § 10.

Somewhat earlier than this case, one of the complaints made against Governor Dudley was the claim made by him under this ancient right:

(Under a Pretence of drift Fish) what Whales are taken by Her Majesty's Subjects, he takes from them by Force, not giving them the Liberty of a Tryal at Common Law, but for his own Ends, decides the Matter in Admiralty, where his Son Paul is the Queen's Attorney and Advocate, thereby encroaching the whole to themselves, a thing never heard of before, and very much to the Prejudice of Her Majesty's good Subjects there, and that without Remedy.<sup>1</sup>

## I.

Lord High Admiral <i>vs.</i> Bassett	}	At a Court of Admiralty holden at Boston before the Hon <sup>ble</sup> : John Menzeis Esq <sup>r</sup> : July 11 <sup>th</sup> 1719~
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June 5<sup>th</sup> 1719 James Smith Esq<sup>r</sup>: Exhibited an Information in behalf of the Lord High Admiral of Great Britain or the Right Hon<sup>ble</sup> the Lords Comiss<sup>rs</sup> for Executing that office against W<sup>m</sup> Bassett of Sandwich within this Province for a certain Royal Fish called a Finback which was ejected by the Sea near that place as p Information on file more fully may appear. The Information was filed and allowed and Publick Notifications & Advertisements Issued out for all Persons pretending any right or Interest therein to enter and maintain their respective Claims betwixt and the 9<sup>th</sup> day of July next ensuing or they will forever be excluded: Accordingly Mess<sup>rs</sup> Joshua Attwood Elisha Parker and Obadiah Buttler lodged their Claim as on file and had a Summons for Witnesses to appear on the 9<sup>th</sup> of July aforesaid in order to support and maintain their Claim. On the day aforesaid the Court was opened and the Information read M<sup>r</sup>: Auchmuty for the Claimers moved for further time in regard their Witnesses were not come, whereupon the Judge continued the Case to the 11<sup>th</sup> Ins<sup>t</sup> and being on that day called. M<sup>r</sup>: Auchmuted [Auchmuty] moved for longer time which the Advocate General opposed and moved for Judgement according to the terms of the Libel; and the Judge pronounced this Decree Viz<sup>t</sup>:

Having considered this Libel and that tho' it be more than a year and a day since the Seizure of the Finback libeled no Person hath appeared and Instructed any Intrest therein

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<sup>1</sup> Deplorable State of New England, 5 Massachusetts Historical Collections, vi. 39.

albeit Several Dyets and Continuations have been Indulged for that effect I therefore Decern Decree and Declare that the Same belongs to the Lord High Admiral as one of the perquisites of Admiralty and Decree Col. Bassett to deliver or hold compt for the value thereof to the Governour of this Province as Vice Admiral and find the value thereof Subject and liable to the Costs of Suit taxed to four pounds eight shill~ & 4<sup>d</sup>.

Sic Subscribitur

Att~ JOHN BOYDELL *Reg.*

J. MENZEIS *J. Adm.* : <sup>1</sup>

There are several other cases in the same volume (Records of Admiralty, Book No. 2) where the same right was claimed and the drift whale decreed to be a perquisite of the Lord High Admiral.

LORD HIGH ADMIRAL

v.

MAYHEW —

26 May, 1719, fol. 32.

“A Certain Whale Cast ashoar on Martha’s Vineyard” —

ADMIRAL

v.

DYER &c.

19 November 1722, fol. 122.

A Libel in behalf of the Admiralty exhibited by John

Valentine, the Advocate General,

“Complaining that the Defend<sup>t</sup> well knowing that a Whale was seized as a drift whale and condemned in this Court, did afterwards cut from the s<sup>d</sup> Whale a Quantity of Blubber.”

ADMIRAL

v.

WHALE

14 June 1723, fol. 145.

To recover the proceeds of a drift Whale taken off

Martha’s Vineyard —

ADMIRAL

v.

WHALE

23 August, 1723, fol. 154.

“Against a drift Whale come ashoare about Scituate or Cohasset” —

Another case appears where the claimants prevailed against the Admiralty.

<sup>1</sup> Records of Admiralty, 1718–1726, Book No. 2, fols. 32, 33.

## II.

At a Court of Admiralty holden at Boston before the  
Hon<sup>ble</sup> John Menzeis Esq<sup>r</sup>

March 29<sup>th</sup> 1720.

High Adm<sup>l</sup> }  
vs. } January 1719. M<sup>r</sup> Valentine Exhibited a Libel in behalf  
Whale } of the Lord High Admiral against Cap<sup>t</sup> Lobdell for a  
Whale drave on Shoar at the latter end of January or begining of  
February last past on Nantaskett als Hull Beach. The Information  
was allowed to be heard on the last Munday in March at 4 a Clock in  
the afternoon and in the meantime Citations and Publick Notifications  
were published for all persons Interested therein to appear at the time  
prefixed accordingly on the 28<sup>th</sup> day of March the Court was opened  
and the Information read and Ezekel Cushion put in a Claim in behalf  
of himself and others w<sup>ch</sup> the Judge examined into, and on the 29<sup>th</sup>  
Curr<sup>t</sup> at 3 a Clock in the afternoon

The Judge declared the Whale was no perquisite of Admiralty  
and that it properly belonged to the Claimors & ordered  
them to pay the Costs in the first place & then the acc<sup>t</sup> of  
Charges which they allowed to be just out of the value.

Sic Subscribitur

Att.~ JOHN BOYDELL *Reg<sup>r</sup>*

J. MENZEIS *J. Adm.*<sup>1</sup>

There are also a couple of cases where a controversy arose  
between persons as to their rights and interest in captured whales,  
in one of which there is a recognition of a possible right in the  
Admiralty, which, however, was not actually claimed. Both  
illustrate the style of proceeding in the Court of Admiralty.

## III.

Griffin & Comp<sup>a</sup> }  
vs } At a Court of Admiralty holden at Boston  
Thomas, & alios } before the Hon<sup>ble</sup> John Menzeis Esq<sup>r</sup> February 25<sup>th</sup> 1718

February 19<sup>th</sup> Samuel Griffin Exhibited a Petion in behalf of himsef  
and Company Setting forth, That your Petitioner in company with  
others being at work on a large Whale on the 27<sup>th</sup> day of November

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<sup>1</sup> Records of Admiralty, 1718-1726, Book No. 2, fol. 50.



last on the High Sea about a league from Cape Anne, the same did mortally wound in Several Places, but by reason of Stormy Winds and night coming on, they lost sight of her, leaving an Iron in the Body of said Whale with a Warp, Drug and Buoy~ That on or about the 10<sup>th</sup> day of December following the said Whale was found dead by Gideon Thomas, Arthur Low, and Robert Standford on this Coast near Marshfield in the County of Plymouth, and y<sup>r</sup> Petiti<sup>r</sup> having claimed her and fully made out his just right & property by giving unquestionable Marks of his having killed her in Company with Others at the time and place aforesaid left her in the Custody of said Persons to be by them Cut up and the produce to be disposed of as your Petitioner should direct. And whereas your Petitioners right to the said Whale is controverted by said Salvors, notwithstanding the p<sup>r</sup>misses, he humbly prays your Hon<sup>r</sup> wou<sup>d</sup> be pleased after due Citations and Monitions Issued out to all Persons concerned to hear and allow his Claim as above and by your Definitive Decree the said Whale to him and Comp<sup>s</sup> to adjudge as being by him and them killed on the High Sea, with such an allowance for Salvage as the Law in such Cases requires &c

The above Petition was filed and allowed to be served and heard the 25<sup>th</sup> Ins<sup>t</sup> at 3 a Clock P.M. and the Judge Ordain'd Notifications to be fixed up in the Town house in the usual Manner which was Accordingly done and also advertised in the Publick news paper at the Instance of M<sup>r</sup> Smith who was advocate for the Petit<sup>s</sup> on the 25<sup>th</sup> Ins<sup>t</sup> aforesaid at the time appointed the Court was opened and the Defend<sup>s</sup> were called all whom appeard Except Sandford as also all other Persons were call'd by the Marshal that pretended any right or Intrest in said Whale. M<sup>r</sup> Valentine s<sup>d</sup> that he appeared in behalf of the Vice-Admiral and moved that the Kings property might be determin'd (said Whale being then under Seizure) before any Persons right therein is determined. M<sup>r</sup> Smith said it was the Mans own Petition and not brought in by him by way of Libel and that the King takes claim when no Person proves a right and that the Petit<sup>r</sup> can try his right with no other Persons but the posessors. M<sup>r</sup> Auchmuty on the same side with M<sup>r</sup> Valentine s<sup>d</sup> the Whale was Seized in behalf of the King and that there ought to have been Citations Issued out in his behalf and that these Defend<sup>ts</sup> ar made out of Colour & amuzement after more Debates as on file, several Depositions were taken on behalf of the Petition<sup>r</sup> and the Defend<sup>ts</sup> declared the[y] durst not deliver up the Whale because she was under a Seizure; M<sup>r</sup> Smith reply'd that cou'd not alter the Property, and that the Defend<sup>ts</sup> ought to be compelled by a Decree of this Court to deliver up the Whale to the Petit<sup>r</sup> who had the sole property and possession therein. Thereafter the Court was adjourn'd to the 26<sup>th</sup> Ins<sup>t</sup> at

3 a Clock P.M. and being again opened at that time M<sup>r</sup> Smith moved for a Decree whereupon the Judge pronounced the following Interlocutory Viz:

Having heard seen and considered this Petition with what is alledged on behalf of the Petitioner and the Defend<sup>ts</sup> acknowledgement and declaration as on file, as allso the allegations of his Majestys Intrest in the Whale Acclaim'd, and being therewith and with the Evidences adduced in the Case Maturely advised I find it proved, that the Petitioner and Company gave the Mortal wounds to the Whale in Controversie and whereof she dyed, I find also that by an Agreement between the Petitioner and the Defendants who had found her dead on Shoar, that they the Defend<sup>ts</sup> were to break her up and to be accountable to him for the produce But in regard the Vice Admiral hath granted a Warrant for her Attachment that the produce may remain Secure untill his Majestys Intrest therein (as being a frift Whale) be determin'd, And that the Bone & Oyle are not as yet wholly prepared and Try'd for use I supercede to Adjudge and Decree the same to belong to and be Accountable for to the Petitioner until the 10<sup>th</sup> day of March next; and allows to the Defend<sup>ts</sup> to Summons John Sable that he may then appear in Court and alledge what he can he being the Person Imploy'd by the Vice Admiral in that affair as Water Bayliff; and also Ordains the Register of Court to acquaint his Excellency of the foresaid Dyet, that his Majestys Advocate General or such others as his Excellency shall think fit may be appointed to appear and plead his Majestys Intrest therein (if he any have) at that Dyet, with certification &c and Ordains the Defend<sup>ts</sup> or Others to retain the possession as they now have it Untill the said Day; and finds and Declares the Defend<sup>ts</sup> liable to the Costs of this Suit taxed to £8 „ 2 „ 6 and Decrees them to pay the same and to have retention thereof in accompting for the produce primo low~  
Sic Subscribitur

J. MENZEIS *J. Ad.*

Accordingly the Court was adjourned to the 10<sup>th</sup> of March and John Sable and others were Summoned to appear on that day and the Court being opened it was adjourn'd to the 11 Ins<sup>t</sup> because it was Charles-town Court and the Lawyers cou'd not attend, on the 11 Ins<sup>t</sup> at 7 a Clock A.M. the Court being opened M<sup>r</sup> Smith Insisted no Person

cou'd appear in behalf of the King in this Court without his consent and argued very Strenuously on that head, whereupon M<sup>r</sup> Valentine declared he appear for one Clark then the[y] proceeded to a further Tryal and several Depositions were take<sup>n</sup> in the Case upon Oath, after which M<sup>r</sup> Valentine moved the Case might be continued till the next morning at 7 a Clock in regard Clarke one of the Principal Evidences was not Come but was Immediately Expected; according<sup>ly</sup> the Court was further adjourn'd till the 12<sup>th</sup> Ins<sup>t</sup> at the time aforesaid when Clark was three times Solemnly called but did not appear. Thereafter the Judge pronounced the following Definitive Decree Viz:~

Having reasumed the Consideration of the Case together with the Oaths of the Witnesses and other Writts produced as Extant on file I Adhere to the former Interlocutory finding the Petit<sup>r</sup> killed the Whale in Controversy; and find and declare his right thereto; and Decree the Defend<sup>ts</sup> to deliver to the Petitioner the whole produce of the Whale as belonging to him; and find that Thomas Clarke hath no right thereto and in regard the Defend<sup>ts</sup> did acknowledge the Petitioners Intrest and that the same was Intrusted by him w<sup>th</sup> them to be prepared and try'd, that they ought to be liable to no part of the Charge of Prosecution, but that the Petitioner ought to pay the same and Decern & Decree him accordingly to pay the Costs taxed to £8 " 2 " 6 (as aforesaid) Reserving to the Petitioner to Insist against the other Competitors for relief of what proportion of the Expence he hath been put to since pronouncing the first Interlocutory as accords ~ Sic Suberibitur

Att<sup>y</sup> JOHN BOYDELL *Reg<sup>r</sup>*

J. MENZEIS *J. Adm.*<sup>1</sup>

#### IV.

At a Court of Admiralty holden at Barnstable before the Hon<sup>ble</sup> John Menzeis Esq<sup>r</sup> February 4<sup>th</sup> 1720.

Davis &c<sup>a</sup>      January 23 Robert Robinson Esq<sup>r</sup> Exhibited a Libel in  
                   *vs*      behalf of Seth Davis of Barnstable Harpeneer and Jon-  
 Sturges &c<sup>a</sup>      athan Davis of the same Place Steersman whale Fisher-  
                   men, and others their Partners against Thomas Sturges and Joseph  
                   Dimick of Barnstable aforesaid Whale Fishermen, which Libel was  
                   filed and allowed to be heard at Barnstable on the 1<sup>o</sup> of February at

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<sup>1</sup> Records of Admiralty, 1718-1726, Book No. 2, fols. 26, 27.

2 a Clock p. m. and warrants Issued out accordingly. At the time and Place appointed the Court was opened and the Parties being present the Libel was read and Imports in Substance. That your Propon<sup>ts</sup> being on the 9<sup>th</sup> of January in a whale Boat with four Persons more upon the High Seas not far from Barnstable a Fishing for Whales between the said Barnstable and Cape Codd at that time upon the High Seas your Propon<sup>t</sup> Seth Davis being Harpeneer with his Harping Iron struck and wounded a large Cow Whale by means whereof your Propon<sup>ts</sup> Possessed themselves of the said Cow Whale and to which said Harping Iron their Main Warp was well fastned and tackled and the said Whale being very large and strong your Propon<sup>ts</sup> were Obliged to call to the Defend<sup>ts</sup> who were in another Boat near them for their assistance is taking the said whale and at the same time proposed to them that they should have an eight part for their pains and trouble (which they accepted of) and the said Whale in her Agonies & Strugling with your Propon<sup>ts</sup> so Intangled the said Wharp about the Arm of one of your Appel<sup>ts</sup> Men which was in the same boat with them that she broak his Arm And the said Defend<sup>ts</sup> at the desire of your Proponts and upon the terms aforesaid Did set in with your Proponents to work in killing of the said Whale and soon after she dyed and was brought on Shoar at Barnstable aforesaid by your Appel<sup>ts</sup> and the said Defend<sup>ts</sup> Sturges and Dimick and they Instantly cut up the said Whale together. Notwithstanding which the said Defend<sup>ts</sup> have Unjustly taken the said Whale into their Possession and Detaine the same from your Propon<sup>ts</sup> to whom of right she properly belonged &c<sup>a</sup> The Defend<sup>ts</sup> moved for time w<sup>ch</sup> was allowed to the 2<sup>d</sup> Ins<sup>t</sup> at which time the Court was again opened and M<sup>r</sup> Otis for the Defend<sup>t</sup> moved for further time, and upon M<sup>r</sup> Auchmutys appearance in Court it was adjourned to the 3<sup>d</sup> Ins<sup>t</sup> at 8 a Clock A. M. at which time the Court was opened and the Parties appeared with their Advocates and Evidences who were all Examined upon Oath whose Testimonys are Extant on file And After a long and full hearing on both Sides the Court was adjourned to the 4<sup>th</sup> Curr<sup>t</sup> on which day the Judge Decreed as follows

Having considered the Libel and Plea thereto given in by the Defend<sup>ts</sup> together with the allegations and Declarations of both Parties as emitted by them, as also read heard and considered the Oaths and Depositions of the Evidences and others adduced in the Case, and being therewith and with the Grounds of the Several Claims to the Property thereof maturely advised, after hearing of the whole allegations answers and Replications made by the Attorneys on each side I find it proved That Jonathan Davis and Comp<sup>t</sup> on the day libeled struck the whale in Controversy before any other came up, and that their Iron was fast to her

and whilst so under their Power; they called to Thomas Sturges & Comp<sup>a</sup> to come and assist them to kill for which they offered  $\frac{1}{8}$  part, and that Immediately after the call he came in, but before he could get up so as to put in his Iron also, by Lamberts Arm in Davis's Comp<sup>a</sup> being broke, the Warp was let Slip I find it also proved That Jon<sup>a</sup> Davis and Comp<sup>a</sup> did continue in the pursuit for some small time in Comp<sup>a</sup> with Sturges and then went on Shoar with the wounded Man, and M<sup>r</sup> Sturges continued in the pursuit, and that Jon<sup>a</sup> Davis and Comp<sup>a</sup> did Speedily within a small time set out again to pursue their Game, and were Informed that Sturges had struck and killed the Whale with the assistance he had called in. I find also that Davis's Warp all the while remained fast to the whale, and that as having a right of Property he did work in bringing the whale to Land. I find also that Sturges persisted in the pursuit till the Whale was killed and was the first Boate that Discovered her on the Eleventh day, and that Sturges in absence of Davis had called in two Boats to his assistance after he had struck the whale to which two he promised  $\frac{1}{8}$  part. And upon the whole after deliberate Consideration of the various Circumstances of the Case and having regard to the Custom amongst the Fishermen I Declare and Decree  $\frac{5}{8}$  parts to pertain to the Plaintiffs and to be delivered or to be accounted for by the Defend<sup>ts</sup> if disposed of, and  $\frac{3}{8}$  parts to pertain or belong to the Defend<sup>ts</sup> in full of their Interest therein, and that with the burthen of  $\frac{1}{8}$ . promised to the two assisting Boats called in by him and find that each of the Parties had Probabilem Causam litigandi and therefore that the Costs of Court & Suit as the same are taxed Extending to Seventeen pounds Seventeen Shillings and Eightpence is to be deducted out of the  $\frac{7}{8}$  parts, paid by the Plaintiffs & Defend<sup>ts</sup> Proportionally according to their Interest therein. As also I Decree five pounds to be paid to Samuel Lambert towards the Defraying the Expence of his cure and as a Moderate gratification and acknowledgem<sup>t</sup> for his Misfortune to be paid out of the 8 parts proportionally and after the same manner I Decree the Expences of cutting up and preparing the Oyle to be paid out of the whole 8 parts proportionably and as to the Plaintiffs & Defend<sup>ts</sup> their own Expences and the Extraordinary Charge they have been put I find them respectively liable thereto without relief from the other.

Att<sup>r</sup> JOHN BOYDELL *Reg<sup>r</sup>*

J. MENZEIS *J. Adm.*<sup>1</sup>

There is a case (28 June, 1720) having a sea tinge of piracy about it, where the petitioners, alleging —

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<sup>1</sup> Records of Admiralty, 1718-1726, Book No. 2, fols. 67, 68.

That on or about the 13th of April last in the Harbour of Cape Porpus als Arrundell, they Surprized and Seized a Sloop called the Sarah & Samuel in the Possession of and under the Command of Sundry Pyrates, which happens to be claimed by Sundry English Gentlemen at Philadelphia [and] Praying that in Consideration of their good Service, Expences and Disburstements, that they may be allowed a just and proper Salvage, as is Customary in like Cases &c. —

there is entered an elaborate decree finding the sloop and cargo liable to salvage, and distributing the proceeds.<sup>1</sup>

Another extract is a copy of the Order issued by “His Majesty in Councill,” upon the representation of “Capt. Thomas Smart<sup>2</sup> Command<sup>r</sup> of His Majesty’s Ship the Squirrel,” which will serve as an illustration of certain modes of procedure and the relations of the New England Courts to the Crown.

## V.

At the Court of S. James’s y<sup>e</sup> 9<sup>th</sup> May 1719.

Present.

The Kings most Excellent Majesty

Lord Chancellor	Earl of Lincoln	Lord Visc <sup>t</sup> Cobham
Lord President	Earl of Westmoreland	Lord Torrington
Lord Privy Seal	Earl of Carlisle	M <sup>r</sup> Comptroler
Lord Chamberlain	Earl of Radnor	M <sup>r</sup> Vice Chamberlain
Duke of Montrose	Earl of Berkley	M <sup>r</sup> Secreta <sup>y</sup> Craggs
Duke of Roxbourge	Earl of Holderness	M <sup>r</sup> Chan <sup>r</sup> of y <sup>e</sup> Dutchy
Duke of Manchester	Earl of Flay	Lord Cheif Just <sup>ice</sup> King
Marq <sup>s</sup> of Annandale	Earl of Tankerville	M <sup>r</sup> Hampden
Earl of Hallifax	Earl of Stanhope	M <sup>r</sup> Wills

<sup>1</sup> Records of Admiralty, 1718–1726, Book No. 2, fol. 57.

<sup>2</sup> The Captain had an affair of honor with John Boydell, the Register of Court of Admiralty, as appears by the Records of the Superiour Court of Judicature, 1718, fol. 259, Dec. Ad<sup>l</sup>.

Capt. Thomas Smart and John Boydell “fought a Duil upon Boston Comon” — in the middle of the forenoon — each drawing his sword and Boydell receiving a slight wound in his arm. As a result of which they were sentenced to “pay a fine to his Majesty of Tenn pounds each, suffer four and Twenty hours Imprisonment” and both bound over till next Court in May, the Captain in one hundred pounds and Boydell in fifty.

Upon reading this day at the Board a Memorial from the Commiss<sup>rs</sup> for executing y<sup>e</sup> office of Lord High Admirall of Great Britain &c. dated the 2<sup>d</sup> of Jan<sup>y</sup> 1718 in y<sup>e</sup> words following Viz:—

It having been represented to us by Capt. Thomas Smart Command<sup>r</sup> of His Majestys Ship the Squirrel appointed by us to attend on y<sup>e</sup> Government of New England, that having Seiz<sup>d</sup> at Canso on y<sup>e</sup> 5<sup>th</sup> day of Octo<sup>r</sup> last, and brought with him to that Government two french Vessells which were fishing & trading there Contrary to y<sup>e</sup> 5<sup>th</sup> & 6<sup>th</sup> articles of y<sup>e</sup> treaty of Peace & Neutrality in America one of w<sup>ch</sup> vessels is a Brigantine, called y<sup>e</sup> Katherine, and y<sup>e</sup> other a Sloop Named y<sup>e</sup> Abigail, als Latrois Amis, and that notwithstanding both of them have been condemned at y<sup>e</sup> Court of Admiralty there, as Lawfull Prizes or Seizures, and Confiscated with there Loading to his Majesty & y<sup>e</sup> Said Capt. Smart as Captor allowd to dispose thereof, after appraise-  
ment, pursuant whereunto he took possession of them, The Governour of New England hath arbitrarily endeavoured to take them from him, and after y<sup>e</sup> Decree of y<sup>e</sup> Judge of y<sup>e</sup> Admiralty, Sent the Marshall of the Vice Admiralty aboard, By Virtue of a Warrant under his own hand, and Seale, to take them out of his possession under pretence that his Security was not Sufficient and that the Country must be answerable, under which pretence as the Capt<sup>r</sup> represents, he Hopes to procure a Grant of them from his Majesty, alledging that what Service he had done, was perform'd by his Orders and that of the Council of New England: We do most Humbly propose unto his Majesty, that Since the said two vessels, have been taken by Capt. Smart & try'd & Condemned by y<sup>e</sup> Court of Admiralty in New England, His Majesty will be graciously pleas'd to extend his Bounty to him y<sup>e</sup> Said Capt. Smart & y<sup>e</sup> officers & Comp<sup>y</sup> of y<sup>e</sup> S<sup>d</sup> Ship y<sup>e</sup> Squirrel By permitting him to dispose of the Vessells with their Cargoe & all things belonging to them & to grant them y<sup>e</sup> whole produce thereof, to be divided in y<sup>e</sup> Same Manner as was done y<sup>e</sup> last warr, as an Encouragement to them for the service they have performed, & to other Command<sup>rs</sup> & officers of His Majestys Ships to do their best Endeavour, to do y<sup>e</sup> Like for y<sup>e</sup> future, and that His Majesty will be also pleas'd to send his Commands to y<sup>e</sup> Governour of New England to Cause y<sup>e</sup> Vessells, with everything that belonged to them to be forthwith restored to Cap<sup>t</sup> Smart, that so, he may be at Liberty to dispose of them to y<sup>e</sup> use of himself, Officers & Ships Comp<sup>y</sup> accordingly: which is nevertheless most Humbly Submitted to his Majesty:

Adm <sup>y</sup> office	By Command of their Lop <sup>s</sup>	} J. JENNINGS    W. CHETWIND Jo. COCKBURNE, Jn <sup>o</sup> NORRIS CHA <sup>s</sup> WAGER.
2 <sup>d</sup> Jan <sup>y</sup> 1718	J. BURCHETT	

His Majesty in counsell taking 'y<sup>e</sup> Same into consideration, is pleased to approve thereof and pursuant thereunto, to order, as it is hereby ordered, that the Said two vessells, taken by Capt. Smart Commander of His Majestys Ship y<sup>e</sup> Squirrell, and which were tryed & Condemned by y<sup>e</sup> Court of Admiralty in New Eng<sup>d</sup> be forthwith restored to Capt. Smart and that he be at Liberty to dispose of the said vessells w<sup>th</sup> their Cargoe & all things belonging to the same, and the whole produce thereof be divided among y<sup>e</sup> officers & Comp<sup>y</sup> of y<sup>e</sup> said Ship Squirrell, in y<sup>e</sup> same manner as was done y<sup>e</sup> Last warr, as an Encouragem<sup>t</sup> for y<sup>e</sup> service they perform'd in taking y<sup>e</sup> said two Vessells: Whereof the Governour or Command<sup>r</sup> in chief of New England for y<sup>e</sup> time Being, and all others whom it may concern, are to take Notice, and Yeild due Obedience to his Majestys pleasure herein signified :

ROB<sup>t</sup> STALES.<sup>1</sup>

The earlier story of the case is found "At a Court of Admiralty holden at Boston before the Hon<sup>ble</sup> John Menzeis Esq<sup>r</sup> October 13th 1718," in "Rex vs. Sloop Abigail als Les trois Amis," on the hearing of a libel under "the 5th and 6th Articles of the Treaty of Peace and Neutrality in America Concluded between the Crowns of England and France the 16th day of Novemb<sup>r</sup>, 1686" — whereby the subjects of each are prohibited to trade and fish within the dominion of the other.<sup>2</sup>

There is a still earlier case under the same title, — at a Court holden 1 August, 1718, — on an Information under "An Act of Parliam<sup>t</sup> made in the seventh and eighth years of the Reign of King Wm 3d Intituled An Act for preventing frauds & regulating abuses in the Plantation Trade."<sup>3</sup>

Whether it is the same vessel is not wholly clear; in each case the vessel is a French sloop; there is a similarity in the name of the master, which in the latter case is Martin Déchevré and in the former Martin Chevré; and where the plea put in by Auchmuty and Valentine sets out "That the vessel was leaky, came into the Port in distress had a Survey from the Governour and she was condemned thereupon, and broak up as unserviceable." The cargo indicates a different employment and the alleged fate of the vessel seems to raise a question, but whether it was a refitting or a re-christening, either follows close in date.

<sup>1</sup> Records of Admiralty, 1718-1726, Book No. 2, fol. 60.

<sup>2</sup> *Ibid.* fols. 12-15.

<sup>3</sup> *Ibid.* fols. 5, 6.



Another is a Libel or Information by the Collector of Customs for a forfeiture of sundry articles of merchandise under an earlier English Statute. It has also an interest as showing the status of negroes in the Province at that time.

## VI.

Province of the Massa. Bay New England	}	At a Court of Adm <sup>y</sup> holden at Boston before y <sup>e</sup> Hon <sup>ble</sup> Jn <sup>o</sup> Menzeis Esq <sup>r</sup> Nov <sup>r</sup> 10 <sup>th</sup> 1721.
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Rex vs 2 Negroes &c	}	1721 Nov. 8 <sup>th</sup> John Valentine Esq <sup>r</sup> Adv <sup>te</sup> Gen <sup>l</sup> Ex- hibited a Lybell or Information in Behalf of y <sup>e</sup> King, the Gov <sup>r</sup> of s <sup>d</sup> Province & John Jekyl Esq <sup>r</sup> Collector of y <sup>e</sup> Customs for y <sup>e</sup> Port of Boston in said Province
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Whereas in the month of May last past there was Seized @ Barnstable & other Places within the same province Two Negroes, Four Cask of Brown Sugar two Casks of Cocoa & two Pateraroes not being entered according to y<sup>e</sup> direction of y<sup>e</sup> Statute of y<sup>e</sup> 14<sup>th</sup> Car<sup>o</sup> 2<sup>d</sup> Wherefore the Same is Forfeited And it is Pray'd on behalfe of His Maj<sup>ty</sup> &c that y<sup>e</sup> p<sup>r</sup>misses be decreed & adjudicated as Confiscate by y<sup>e</sup> Hon<sup>ble</sup> Court to be divided according to Law, as in Such Cases is Usual W<sup>ch</sup> was allowed to be heard on the 10<sup>th</sup> Curr<sup>t</sup> & Notifications were Issued out accordingly but nobody appearing upon Proclamation being made —

The Judge Decreed Conformable to y<sup>e</sup> Libel. and y<sup>e</sup> Effects were sold by Publick Vendue for £99 „ 11 „ 0 „ as per Acc<sup>t</sup> thereof on file Vido Case Lechmere vs Wines & Brandy But y<sup>e</sup> Charges arising there on are very Considerable as may be Seen ¶ s<sup>d</sup> Account

Att<sup>r</sup> JOHN BOYDELL *Reg<sup>r</sup>*<sup>1</sup>

There appears in the Records a receipt signed by Samuel Shute for the Governor's share, for “ $\frac{1}{2}$  of the Neat proceeds Arising upon 2 Negros” and the groceries sold at public vendue, and the receipt of John Jekyll, the Collector, of his two-thirds of the proceeds of the sale.<sup>2</sup>

Another record shows the mode of appointment of the Deputy-Judge of the Vice-Admiralty Court.

<sup>1</sup> Records of Admiralty, 1718–1726, Book No. 2, fol. 96.

<sup>2</sup> *Ibid.* fol. 83.

## VII.

Province of the Massach. Bay New England	}	At a Court of Admiralty holden at Boston on the 22 <sup>d</sup> day of September 1722. The Deputation appointing Thomas Steel Esq <sup>r</sup> Deputy Judge of Vice Admiralty for the Province aforesaid was read & is hereafter Recorded
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Thomas Steel Esq<sup>r</sup> Deputation      To all People unto whom these Presents shall come  
John Menzeis of Leister. in the County of Middle-  
sex Esq<sup>r</sup> Judge of Admiralty in the Provinces & Colonys  
of the Massachusetts Bay, New Hampshire, Rhoad Island Providence  
Plantation & the Naragansett Country or Kings Province in America  
& the Territories thereon Depending Sendeth Greeting. Whereas His  
Sacred Majesty George by the Grace of God of Great Brittain France  
& Ireland King Def<sup>t</sup> of the Faith &c. By His Royal Commission under  
the Great Seal of the High Court of Admiralty of England bearing  
date the Twenty Sixth day of August One Thousand and Seven hundred  
and fifteen and in the Second Year of His Majestys Reign, Hath Con-  
stituted and Ordained me the said John Menzeis His Majestys Commis-  
sioner and Judge of the Admiralty in His Majestys Provinces & Colonys  
before Mentioned. Together with power of Deputing & Substituting in  
my Stead in the Premisses one or more Deputy or Deputies as I shall  
think fitt with all Fees &c thereto belonging According to the Custom of  
the said Court of Admiralty of Old Used & Accustomed Commanding  
& Strictly enjoyning all and Singular Lords Peers Barrons Governours  
Knights Mayors Justices of the Peace Sheriffs Stewards Keepers of  
Goals & Prisons Bayliffs Constables & other Officers & Ministers and all  
other His Majestys Liege People in and through His Majestys Provinces  
and Colonys &c & maritime Parts thereof & thereunto adjoyning to be  
aiding & assisting and Obedient in all things as is becoming upon pain  
& Perill as shall follow thereon, as by the said Commission relation  
thereunto being had more fully plainly & particularly Appears. Now  
know ye That I the said John Menzeis Having Sufficient knowledge of  
the Ability & good Qualifications of Thomas Steel of Boston Esq<sup>r</sup> any  
great trust & Confidence in his Integrity to Discharge that Trust. By  
vertue of the said Commission to me Granted as aforesaid Have Ap-  
pointed Constituted & Surrogated and Do hereby for and during the  
time that I shall think fitt Appoint Constitute & Surrogate the said  
Thomas Steel my Deputy as aforesaid in & through the said Province  
of the Massachusetts Bay & Maritime Parts of the Same and thereunto

adjoining Together with all and Singular Powers authorities Sallarys Fees Profits advantages & Commodities to the said office within the said Province of Massachusetts Bay & Maritime Parts of the Same in any manner belonging and according to the Custom of the said Court of Admiralty from of Old Used & Accustomed In Witness whereof I have hereunto set my hand and Seal the Thirty first day of August in the Ninth Year of the Reign of our Sovereign Lord George by the Grace of God of Great Brittain &c King And in the Year of Our Lord One Thousand Seven hundred Twenty & two.

J. MENZEIS & a Seal.

21. September 1722. Cap<sup>t</sup> Thomas Steel took and Subscribed the Oaths appointed to be taken Instead of the Oaths of Allegiance & Supremacy and Declaration.

Coram

THOMAS FITCH } of the Council<sup>1</sup>  
JON: BELCHER }

The Records also show the appointments and Commissions of various other officers and the mode of procedure in each case. There is the Commission of the Marshal, Arthur Savage, recorded at length at the Court, 13 October, 1724.<sup>2</sup> It is given in the name of his Majesty at London 1 July 1724, in the tenth year of George I., under "Sigillum Magnum Supremæ Curie Admiralitatis Nostræ Angliæ." It is in sonorous though somewhat difficult Latin, wherein the combination of the classic and the vernacular relieves the monotony and gives a certain jerky animation of its own.

Not long after follows the Commission of the Deputy Marshal, Daniel Goffe, dated 6 November, 1724, and read at the Court 13 November; it is under the hand and seal of the Marshal; but deriving his authority from an humbler and provincial source, it finds the simple English tongue sufficient to invest him with all the duties and powers of his subordinate office.

There is also the Deputation of Arthur Savage as Deputy Register, under the hand and seal of John Boydell, Register, presented at a Court of Vice-Admiralty before the Honorable John Menzeis, Judge of said Court, 30 October, 1722.<sup>3</sup>

At a Court held 1 November, 1723, —

<sup>1</sup> Records of Admiralty, 1718–1726, Book No. 2, fol. 109.

<sup>2</sup> *Ibid.* fol. 182.

<sup>3</sup> *Ibid.* fol. 116.

Archibald Cumings, Esq., produces a Commission appointing him Agent to Receive the Rights and Perquisites of Admiralty, which was read: Thereafter the Judge tendered the Oath *De fidei* as appears by the Minute Book, and ordered the Commission with the Instructions Annexed to be Recorded, which are as follows viz<sup>1</sup>

The Commission is in Latin from his Majesty, with four folio pages of instructions annexed in English.<sup>1</sup>

These records show the formalities observed, and also prove the existence of Minute Books, now no longer extant, corresponding to the Dockets of the present day.

The extracts which have been given have been taken from the earliest book of Admiralty records now in the Supreme Judicial Court. The later books of record contain matter of like character. These volumes are full of interest and cover the field of Admiralty proceedings. They are unique in character; they have a tinge of the formalities of the Civil Law. There is an elaboration, a minuteness, a formality, wholly unlike the concise and terse records of the Common Law Courts, while the fulness of detail turns the dry record of legal proceedings into an entertaining story of human action and interest.

To treat with any approach to completeness or thoroughness the history of Admiralty Jurisdiction in the earlier days of Massachusetts would require much research and careful study and a comprehensive survey of the whole field; for the subject is not wholly clear in the earlier years, the time of the Colony, and somewhat obscure and more or less complicated in the times of the Province. It would need a thorough and minute examination of all the Massachusetts Archives, of the records of the Admiralty Court, of official records and documents, contemporaneous writings, the accounts of the newspapers of the day, after they began to be issued and to supply so much material for history, and all kindred sources of original and authentic information with a discriminating review of the many histories; — also a study of the relations of the Dependency to the Mother Country, and likewise of the political conditions and relations subsisting at the different times, and all sorts of questions springing out of them; as well as of the facts and causes of the legislation affecting Admiralty Jurisdiction and maritime matters in general.

<sup>1</sup> Records of Admiralty, 1718-1726, Book No. 2, fol. 159.

From the original and the trustworthy material thus secured might be worked out an authentic and satisfactory history of Admiralty Jurisdiction in the Colony and in the Province of the Massachusetts Bay.

This paper is merely what its title purports, — a few Notes.<sup>1</sup>

<sup>1</sup> The exercise of Admiralty Jurisdiction by the Court of Assistants has been touched upon in this paper, and cases recorded in Volume i. mentioned. Many original papers in such cases are among the Suffolk Court Files: nos. 1,279; 1,417; 1,425; 1,514; 1,587; 1,672; 1,819; 1,887; 1,909; 1,932; 1,934; 1,935; 1,939; 1,940; 1,941; 1,942; 1,943; 2,031; 2,055; 28,540 (without date); 2,087; 2,102; 2,152; 2,398. There are some later files, in the Superiour Court of Judicature, before 1700: nos. 3,123; 4,188; 98,533; 3,564; 26,145; 26,283; 26,572; and others also incidentally touching on such matters: nos. 26,660; 26,661; 28,225; 28,409; 28,437; 28,550; 28,808; 28,831. There are also numerous files relating to Piracy previous to or in 1700, except such as are undated: nos. 514; 817; 826; 1,238; 1,287; 1,288; 1,390; 2,251; 2,516; 2,539; 2,520; 2,537; 2,538; 2,540; 3,010; 3,033; 3,765; 4,576; 4,682; 4,860. These are undated: nos. 24,464; 25,973; 26,283; 26,627; 27,230; 27,989; 28,808; 10,923 (1716); 162,286 (fragment); vol. mlviii. no. 99 (fragment). There are besides these, the noted cases of John Baptist, Jean Baptiste: nos. 19,554 (2 papers); 19,755 (12 papers); 28,868; 26,283; and of Van Vorst: nos. 11,945 (8 papers); 26,283 (7 papers), cited above.

These citations, of course, taken, with a few casual exceptions, from the Calendar Index, 1629 to 1700, are not intended to be exhaustive.















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